

REMARKS

Applicant respectfully requests reconsideration of the present Application. Claims 1, 9, and 18-21 and 24-26 are amended, claims 5-6 and 22-23 are canceled, claims 13-17 are withdrawn, and new claim 27 is added. Claims 1-4, 7-12, 18-21, and 24-27 are in condition for allowance. Reconsideration of the present application in view of the following remarks and above amendments is respectfully requested.

Substance of Interview

Applicant thanks Examiner Osman for granting the interview on 14 May 2008, and for considering the proposed amendments to independent claims (1 and 18) and the arguments regarding the deficiencies of the prior art, including Ghose. During the interview, Examiner Osman indicated that the proposed amendments appear to overcome the 35 U.S.C. §§ 101 and 112 rejections. However, Examiner Osman reasoned that Ghose may still be applicable to the proposed amendments. Applicant's representative disagreed and noted differences between the transmission regulation in Ghose and in Applicant's invention for transmission regulation. Examiner Osman stated that after the proposed amendments are filed, further consideration is required to determine whether the amendments place the application in condition for allowance.

Objections

The specification is objected because paragraph [0001] failed to provide a application serial number for a related application. Applicant amends paragraph [0001] to include the relevant serial number (10/608,192). Accordingly, Applicant respectfully requests withdrawal of the objection to the specification.

Rejections based on 35 U.S.C. § 112

A.) Applicable Authority

Title 35 U.S.C. § 112, paragraph one states “[t]he specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.” Additionally, paragraph two of 35 U.S.C. § 112 states “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.”

B.) Written Description Rejection

Claim 9 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses this rejection by amending claim 9.

The Office contends the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Office reasons that the specification “fails to detail what exactly is a “non-drained state””.

Applicant amends claim 9 to recite a full state. At least, Applicant’s specification at paragraph [0022], describes the full state for the queue. Applicant respectfully requests

withdrawal of the written description rejection because claim 9 is fully supported by Applicant's specification.

C.) Indefiniteness Rejection

Claim 18 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection by amending independent claim 18.

The Office contends claim 18 is indefinite because it is unclear which statutory category it falls within. Applicant amends independent claim 18 to recite a computer readable medium storing instructions for performing a method for transmitting messages. The method preformed by instructions stored on a computer readable media is within the process statutory category. See, Microprocessor Enhancement Corp. v. Texas Instrument Inc., Appeal No. 2007-1249 (Fed. Cir. 2008). Accordingly, Applicant respectfully requests withdrawal of the indefiniteness rejection of independent claim 18.

Rejections based on 35 U.S.C. § 101

A.) Applicable Authority

Title 35 U.S.C. § 101 states “ [w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

B.) Non-statutory Subject Matter Rejection

Claim 18 stands rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicant amends claim 18 to respectfully traverse the rejection of amended independent claim 18.

Applicant amends independent claim 18 to recite a method performed based on instructions stored in one or more computer readable media. The claims is directed to a process for transmitting message over a communication network. Accordingly, Applicant respectfully requests withdrawal of the non-statutory subject matter rejection of amended independent claim 18.

Rejections based on 35 U.S.C. § 102(e)

A.) Applicable Authority

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir.1989). *See also*, MPEP § 2131.

B.) Anticipation Rejection Based on US Patent No 7,305,486 (“Ghose”).

Claims 1, 5-7, 10, 12, 18, and 22-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ghose. Applicant respectfully traverses the anticipation rejection of claims 1, 5-7, 10, 12, 18, and 22-24 because Ghose fails to describe all elements of amended independent claims 1 and 18.

Independent claim 1 recites a method for initiating the transmission of data. The method comprises establishing a connection from at least one data source to a destination and generating at least one session to transmit data via the connection from the at least one data source to the destination, where generating at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination via the application programming interface. In turn, a set of messages from the at least one session for transmission over the connection to the destination are queued. The queued set of messages are transmitted based upon completion information associated with the queued set of messages.

It is respectfully submitted that the cited prior art, including Ghose, fails to describe, among other things, *generating at least one session to transmit data via the connection from the at least one data source to the destination, wherein generating at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination via the application programming interface; . . . and transmitting messages from the queued set of messages based upon completion information associated with the queued set of messages*, as recited in amended independent claim 1.

The Office relies upon Ghose, at col. 9, ll. 53-56; col. 13, ll. 61-col. 14, ll. 5; and col. 15, ll. 7-21. The cited portions of Ghose describe sending data between a host and receiver based on credits established by the receiver. In Ghose, the receiver regulates the data flow from the host. Nothing in Ghose describes an application programming interface for generating a session and transmitting messages based on completion information associated with a queued set of messages awaiting transmission.

Unlike Ghose, the invention of amended independent claim 1, requires, among other things, *generating at least one session to transmit data via the connection from the at least*

one data source to the destination, wherein generating at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination via the application programming interface and transmitting messages from the queued set of messages based upon completion information associated with the queued set of messages. Ghose fails to expressly or inherently describe all elements of the invention of amended independent claim 1. Accordingly, for at least the above reasons, Applicant respectfully requests withdrawal of the anticipation rejection and allowance of amended independent claim 1.

Dependent claims 2-4 and 7-12 further define novel features of the invention of amended independent claim 1 and each depend, directly or indirectly, from amended independent claim 1. Accordingly, for at least the reasons set forth above with respect to independent claim 1, dependent claims 2-4 and 7-12 are believed to be in condition for allowance by virtue of their dependency. *See*, 37 C.F.R. §1.75(c). As such, withdrawal of the 35 U.S.C. §102(e) rejection of dependent claims 2-4 and 7-12 is respectfully requested.

Independent claim 18 recites one or more computer-readable media storing instructions for performing a method to send a transmissible message over a communication network. The method comprises establishing a connection from at least one data source to a destination and establishing at least one session to transmit data via the connection from the at least one data source to the destination, where establishing at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination. In turn, at least one message from the at least one session for transmission over the connection to the destination is queued, where queuing the at least one message comprises queuing the at least one message in at least one input/output buffer. The communication of the at

least one queued message is regulated based upon completion information associated with the at least one input/output buffer.

It is respectfully submitted that the cited prior art, including Ghose, fails to describe, among other things, *establishing at least one session to transmit data via the connection from the at least one data source to the destination, wherein establishing at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination; queuing at least one message from the at least one session for transmission over the connection to the destination, wherein queuing the at least one message comprises queuing the at least one message in at least one input/output buffer; and regulating the communication of the at least one queued message based upon completion information associated with the at least one input/output buffer*, as recited in amended independent claim 18.

The Office relies upon Ghose, at col. 9, ll. 53-56; col. 13, ll. 61-col. 14, ll. 5; and col. 15, ll. 7-21. As discussed above, the cited portions of Ghose describe sending data between a host and receiver based on credits established by the receiver. Nothing in Ghose describes an application programming interface for establishing a session and regulation communication of messages from at least one data source based on completion information associated with a queued set of messages awaiting transmission in at least one input/output buffer.

Unlike Ghose, the invention of amended independent claim 18, requires, among other things, *establishing at least one session to transmit data via the connection from the at least one data source to the destination, wherein establishing at least one session comprises invoking an application programming interface and receiving a session acceptance from the destination; queuing at least one message from the at least one session for transmission over the connection to the destination, wherein queuing the at least one message comprises queuing the at least one*

message in at least one input/output buffer; and regulating the communication of the at least one queued message based upon completion information associated with the at least one input/output buffer. Ghose fails to expressly or inherently describe all elements of the invention of amended independent claim 18. Accordingly, for at least the above reasons, Applicant respectfully requests withdrawal of the anticipation rejection and allowance of amended independent claim 18.

Dependent claims 19-21 and 24-26 further define novel features of the invention of amended independent claim 18 and each depend, directly or indirectly, from amended independent claim 18. Accordingly, for at least the reasons set forth above with respect to independent claim 18, dependent claims 19-21 and 24-26 are believed to be in condition for allowance by virtue of their dependency. *See*, 37 C.F.R. §1.75(c). As such, withdrawal of the 35 U.S.C. §102(e) rejection of dependent claims 19-21 and 24-26 is respectfully requested.

Rejections based on 35 U.S.C. § 103(a)

A.) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestions or

motivations found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See *Application of Bergel*, 292 F. 2d 955, 956-957 (CCPA 1961). Recently, the Supreme Court elaborated, at pages 13-14 of the *KSR* opinion, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, No. 04-1350, 550 U.S. ____ (2007).

B.) Obviousness Rejections Based on Ghose in view of U.S. Patent Publication No. 2003/0079121 (“Gilman”).

Claims 2-4, 11, 19-21 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ghose in view of Gilman. Applicant respectfully traverses this rejection because the prior art, including Ghose and Gilman fail to teach or suggest all elements of the inventions of independent claims 1 and 34.

Claims 2-4, 11, 19-21, and 26 depend from amended independent claims 1 and 18. As discussed above, Ghose fails to teach or suggest all the elements of independent claims 1 and 18. Accordingly, claims 2-4, 11, 19-21, and 26 are patentable over Ghose for at least the above-cited reasons. The addition of Gilman fails to cure the deficiencies of Ghose with respect to the elements of amended independent claims 1 and 18. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. §103(a) rejection and allowance of dependent claims 2-4, 11, 19-21, and 26.

C.) Obviousness Rejections Based on Ghose in view of U.S. Patent No. 6,223,207 ("Lucovsky").

Claims 8-9 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ghose in view of Lucovsky. Applicant respectfully traverses this rejection because the prior art, including Ghose and Lucovsky fail to teach or suggest all elements of the inventions of independent claims 1 and 18.

Claims 8-9 and 25 depend from amended independent claims 1 and 18. As discussed above, Ghose fails to teach or suggest all the elements of independent claims 1 and 18. Accordingly, claims 8-9 and 25 are patentable over Ghose for at least the above-cited reasons. The addition of Lucovsky fails to cure the deficiencies of Ghose with respect to the elements of amended independent claims 1 and 18. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. §103(a) rejection and allowance of dependent claims 8-9 and 25.

New claim 27

New claim 27 rounds out the scope of the invention and is allowable over the prior art. No new matter is introduced in new independent claim 27. Accordingly, Applicant respectfully requests allowance of independent claim 27.

CONCLUSION

For at least the reasons stated above, claims 1-4, 7-12, 18-21, and 24-27 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned to resolve the same. A one-month extension fee of \$120 is included with this filing, however, the Commissioner is hereby authorized to charge any additional amount required (or to credit any overpayment) to Deposit Account No. 19-2112 referencing attorney docket no. MFCP.103654.

Respectfully submitted,

/MONPLAISIR HAMILTON/

Monplaisir Hamilton
Reg. No. 54851

PAL/mghz
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550